IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL
Jail Appeal No. 15 of 2004.

Smt.Madhu Devi wife of Late Girish Chandra, resident of village Khankar, Patwari circle Kherakhal, Tehsil and district Rudraprayag.

….. Appellant.

Versus

State of Uttaranchal.

… Respondent.

AND

Criminal Appeal No. 86 of 2005.

Smt. Madhu Devi wife of Late Girish Chandra, resident of village Khankar, Patwari circle Kherakhal, Tehsil and district Rudraprayag.

….. Appellant.

Versus

State of Uttaranchal.

… Respondent.

Sri L.K. Tewari, Amicus Curiae and Sri Lokendra Dobhal, learned counsel for the appellant.
Sri Nandan Arya, learned A.G.A. for the State.

Hon'ble Dharam Veer, J.

1. Both the aforesaid criminal appeals arise out of the common Judgment and evidence. Jail Appeal No. 15 of 2004 has been preferred by the appellant from jail and Criminal Appeal No. 86 of 2005 has been preferred by the learned counsel for the appellant, hence both the appeals are being disposed of by a common judgment. Both these appeals, preferred by one and the same appellant Smt. Madhu Devi, are directed against the judgment and order dated 04.12.2003 passed by the learned Sessions Judge, Rudraprayag is Sessions Trial No.22 of 2003 whereby appellant was convicted under section 304 Part II of the Indian Penal Code and was sentenced to rigorous imprisonment for a period of 7 years.

2. The facts of the case, in nut-shell, are that in the intervening night of 11.06.2003 an altercation took place between the appellant/wife and the husband/deceased Girish Chandra at 8.00 p.m. PW 1 Satish Chandra, the brother of the deceased, PW 2 Smt.

Kamala Devi, PW 3 Vishal Mani and PW 4 Smt. Krishna Devi saw the husband/deceased and wife of the deceased were quarreling inside their house but they did not interfere because the quarrel used to take place daily between the husband and the wife. In the morning of 12.06.2003 the appellant Smt. Madhu Devi told about the murder of her husband to Smt. Krishna Devi (PW 4) who was the Pradhan of the village at that time. From this information PW 4 Smt. Krishna Devi through Ext.Ka.4 gave information to Patwari Kherakhal mentioning the fact that on 12.06.2003 at 5.00 a.m. in the morning Smt. Madhu Devi informed her alleging about the death of her husband. She informed S.O. Rudraprayag through telephone No.233208. Lateron she made the written complaint to the Patwari through Ext.Ka.4. On this information PW 5 Darshan Lal, Patwari of the area reached on the spot and inspected the dead body. He prepared inquest report (Ext.Ka2) and prepared a site plan (Ext.Ka.6). He recovered the 'Mushal' (Ext.1) on 12.6.2003 from the house of the appellant/accused and prepared a recovery memo (Ext.Ka.3). He also recovered a 'phal' of 'Kudal' (Ext.2) on 14.06.2003 and prepared its memo (Ext.Ka.10). He sent the dead body for postmortem to Gopeshwar. After taking the statement of the witnesses and completing the investigation, he submitted the charge-sheet (Ext.Ka.12) against the accused.

3. Dr. S.P.S. Negi (PW 6), Medical Officer, district hospital Gopeshwar had conducted the autopsy of the deceased Girish Chandra and found the following ante-mortem injuries on the person of the deceased:

(i) Incised wound on right forehead on lateral side 5 cm above. Right eye brow 3 cm X 5 cm margins black.

(ii) Incised wound on right frontal bond 7 cm above from right eye brow oblique serrated size 9 cm 1 cm margin black mar lying bone is also incised up to manages.

(iii) Incised wound on right parietal eminence 5 cm X 1 cm bone is also incised up to manages.

(iv) Incised wound on left frontal bone on 5 cm above left eye brow lateral side 5 cm X 1 cm margins black bone is also incised up to manages.

(v) Incised wound on left parietal eminence 4 cm X 1 cm margin black, wound is bone deep.

(vi) Incised wound on the center of head 3 X 1 cm bone dep margin black.

(vii) Incised wound on the center of the head 5 cm X 1 cm brain alienated up to manages.

(viii) Lacerated wound right ear lobelia 4 X 1 cm margin black.

(ix) Lacerated wound on the skull below from right ear lobelia size 3 cm X 1 cm bone deep margin black.

(x) Fracture Mandible left side in the center. No external injury mark.

(xi) Fracture left shin bone at the level of upper 1/3 & 2/3.

4. In internal injuries, the doctor found that stomach was empty and brain was full of blood. In the opinion of the doctor the cause of death is due to heamorrhaged and shock due to anted-mortem injuriesd. He proved the postmortem report (Ext.Ka.13). He also opined that injury NO.8 to 11 could come from 'Mooshal' (Ext.1) and injuries No.1 to 6 could come from 'Kudal' (Ext.2)

5. The prosecution, in support of its case, has examined PW 1 Satish Chandra who made a written report (Ext.Ka.1) and report was lodged regarding the murder of the deceased without naming any person in the FIR. The case was registered on the information of Satish Cahandra which is Ext.Ka.5. PW 2 Smt. Kamala Devi is the witness of the quarrel between the deceased/husband and the appellant/wife. PW 3 Vishal Mani is the witness of the inquest report and also a witness of altercation which took place between the husband/deceased and appellant/wife. PW 4

Smt. Krishna Devi has given the information to the Patwari regarding the murder of the deceased and she has also given the information to the police station, Rudraprayag by telephone. She was the Pradhan at that time of the concerning village. PW 5 Darshan Lal, Patwari is the Investigating Officer who conducted the investigation and submitted the charge sheet. PW 6 Dr. S.P.S. Negi who conducted the autopsy of the deceased Girish Chandra.

6. The appellant/accused, in her statement under section 313 Cr.P.C., has denied the allegations of the prosecution totally. She has stated that the informant Satish Chandra used to quarrel with her on account of the agricultural land. She has also stated that her husband used to come in a drunken state daily. The accused/appellant did not examine any witness in her defence.

7. I have heard learned Sri L.K.Tewari, Amicus Curiae and Sri Lokendra Dobhal, learned counsel for the appellant and Sri Nandan Arya, learned A.G.A. for the State and perused the entire record.

8. Learned counsel for the appellant has submitted that the appellant is not named in the FIR and the FIR is delayed. Learned counsel for the appellant has submitted that the incident took place at 8.00 p.m. on 11.06.2003 while the FIR was lodged by PW 1 Satish Chandra on 12.06.2003 at 5.00 p.m. while he is a witness of inquest report also. Thus, there is delay in lodging of the FIR. On the other hand, learned A.G.A. Mr. Nandan Arya has contended that the murder took place in the house of the accused. The appellant has informed regarding the murder of her husband to PW 4 Smt. Krishna Devi at 5.00 a.m. on 12.06.2003 in the morning and then Smt. Krishna Devi had informed the Patwari Darshan Lal (PW 5) through her report (Ext.Ka.4). Smt. Krishan Devi has

deposed in her evidence that Smt. Madhu Devi, the appellant has come in the morning of 12.06.2003 and made extra judicial confession before her about the killing of her husband. Smt. Krishna Devi has made the telephonic call to S.O. Rudraprayag and has given information to the Patwari. The Patwari reached on the spot as per the inquest report at 1.00 p.m. He remained there till 4.00 p.m. Lateron FIR was lodged by PW 1 Satish Chandra, the brother of the deceased Girish Chandra about the murder of husband of the appellant without naming the appellant in the FIR. Thus, in the above said facts and circumstances the delay in the FIR is not fatal to the prosecution.

9. The learned counsel for the appellant has further submitted that there is no direct evidence against the appellant. It is true that there is no direct evidence but the case relates to the circumstantial evidence. When the murder of Girish Chandra took place inside the house, it is the duty of the appellant to tell the cause of murder and the name of the accused. The appellant Smt. Madhu Devi had informed PW 4 Smt. Krishna Devi, Pradhan of the village about the incident. She made extra judicial confession before her. Smt. Krishna Devi (PW4) has deposed in her evidence that " मैने अपने पति गीरीश चन्द्र को मार दिया है। मुझे थाने में बन्द करा दो तथा बच्चो को अपने नैनीहाल भेज दो" The extra judicial confession was made just after the incident before the Pradhan of the village. Thereafter the Pradhan of the village has given the telephonic call to S.O. Rudraprayag and gave a written information to the Patwari. Thus, it is not possible for PW 1 Satish Chandra to name the accused/appellant in his report (Ext.Ka.1). He has deposed in his evidence as follows:

" अगले दिन सुबह मुझे घटना का पता चला (12.06.2003 को) लगभग 6–7 बजे की बात है सुबह सात बजे मेरी भाभी मेरे पास आई और कहने लगी तुम्हारे भाई

खत्म हो गये उनका दाह संस्कार कर दो। उसने मुझे बताया कि मैं गॉव के लोगो के पास भी गयी लेकिन कोई नही आया।"

This fact was also mentioned in the FIR (Ext.Ka.1). The appellant did not tell any cause about the death of her husband Girish Chandra to PW 1 Satish Chandra who is brother of Girish Chandra deceased.

10. The main circumstance of the case against the appellant is that the quarrel took place between the husband/ deceased Girish Chandra and the wife/appellant Smt. Madhu Devi in the night of 11.06.2003 at 8.00 p.m. This altercation was witnesses by PW 1 Satish Chandra, PW 2 Smt. Kamala Devi and PW 3 Vishal Mani. On this information PW 1 Satish Chandra came from his house and saw the quarrel from the way but he did not go inside the house of the appellant due to fear. PW 2 Smt. Kamala Devi has also deposed that on 11.06.2003 at 8.00 p.m. she was inside the Gaushala. She was giving fodder to her cattles. She heard the noise of quarrelling. She saw from her window that Smt. Madhu Devi, appellant and her daughters Km. Punam and Km. Kiran were beating the deceased from sticks. Lateron in the morning she came to know about the death of deceased Girish Chandra.

11. P.W. 3 Vishal Mani has also deposed that in the night of 11.6.2003 at 8.00 p.m. he was sitting inside his house. His house is situated in front of the house of the appellant. He heard the noise of abusing. He went inside the Chowk of the appellant and saw that Girish Chandra, husband/deceased and wife/appellant were quarreling with each other. The appellant Smt. Madhu Devi and her daughters were beating the deceased Girish Chandra with 'dandas'. PW 4 Smt. Krishna Devi had also heard the noise of deceased Girish Chandra from her house.

12. From the site plan it appears that the Gaushala where Smt. Kamala Devi was present at the time of incident was in front of the house of deceased Girish Chandra and window of the Gaushala was shown in the site plan. The house of the appellant was seen from the window of Smt. Kamala Devi (PW 2). The body of deceased Girish Chandra was lying in the varandah. Thus, the site plan also supports the version of the witnesses Satish Chandra and Smt. Kamala Devi.

13. The learned counsel for the appellant has also submitted that the weapons recovered, i.e. Mooshal and Kudal was not sent for chemical examination. This argument has got not weight because this circumstance is also goes against the appellant. The recovery of Mooshal and Kudal was made from the house of the appellant. Recovery of the weapons shows that murder was committed by these weapons and these weapons were blood stained at the time of recovery. The Mooshal was recovered on the same day on 12.06.2003 and Kudal was recovered on 14.06.2003. Thus, this recovery is again one circumstance which is against the appellant.

14. The learned counsel for the appellant has further submitted that the oral evidence is not corroborated by the medical evidence but this argument of the learned counsel for the appellant is not correct. PW 6 Dr. S.P.S.Negi has clearly deposed in his statement that the injury No.8 to 11 could be caused through Mooshal and injury No.1 to 6 could be caused by Kudal. In this way there is no difference between the oral evidence and the medical evidence.

15. The learned counsel for the appellant has also submitted that as per the evidence of the witnesses the deceased was beaten by lathis and dandas. The incident was witnesses by the witnesses from different places and it is not

possible for them to identify the weapons used in the commission of the offence but the recovery of these weapons (Mooshal and Kudal) from inside the house of the appellant after the commission of the offence containing blood on the recovered weapon clearly shows that the murder was caused by these weapons. These circumstances also establish the involvement of the appellant in the commission of the offence. Girish Chandra died inside the house of the appellant due to the injuries caused by Smt. Madhu Devi in sudden and grave provocation and the appellant was present inside the house and as per the evidence discussed above I am of the view that the chain of the circumstances are complete to prove the guilt of the appellant for committing culpable homicide not amounting to murder and the offence punishable under section 304 Part II IPC is proved against her.

16. From the above circumstances and evidence it is clear that there is no motive and intention of the appellant to commit the murder of her husband and Girish Chandra was died in a quarrel between the wife and husband in grave and sudden provocation due to the injuries caused by Smt. Madhu Devi,. Thus, on the basis of the above circumstances and evidence discussed above I am of the view that the judgment and order of the learned Sessions Judge convicting the appellant under section 304 Part II IPC is justified.

17. Lastly, learned counsel for the appellant has submitted that the sentence awarded by the learned Sessions Judge to the appellant may be reduced. The learned counsel for the appellant has submitted that the appellant had three daughters and there is none to look after them. She is a lady aged about 39 years old. He has submitted that her sentence may be reduced. It is a well settled principle of law that

Sentence awarded to her commensurate with the offence. The learned Sessions Judge has held that offence comes within the purview of section 304 Part II IPC. It would be just and proper in this case to punish the appellant by sentencing her to 5 years' rigorous imprisonment instead of 7 years' rigorous imprisonment.

18. In view of the foregoing discussion the appeal is partly allowed. The conviction of the appellant under section 304 Part II IPC is maintained. The appellant is sentenced to suffer rigorous imprisonment for a period of 5 years instead of 7 years rigorous imprisonment as awarded by the learned Sessions Judge.

(Dharam Veer, J)

Dated: 16.11.2006.

Negi.